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Energy/Income Tax Credits: Blog Energy Business Law Notes Pending Questions Regarding Determination When a Project Has "Begun Construction"

Arkansas Environmental, Energy, and Water Law Blog

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The blog *Energy Business Law* has a February 5th post noting a number of pending questions regarding when renewable energy projects will be deemed to have "begun construction" under the recently extended federal income tax credits available for solar, wind, and other energy related projects.

The post is titled *What Must Be Done for Wind and Solar Projects to Have "Begun Construction" under the New PTC and ITC?*.

As the post notes, determining when a renewable energy project has "begun construction" for the purposes of these income tax credits can be important for:

- determining qualification for the credits
- provide for a phase out or reduction in the available credits over time

The post predicts that the Internal Revenue Service will "soon issue guidance detailing when a project will be determined to have 'begun construction' and when continuous construction efforts are required."

The post identifies as key pending questions:

- Will the beginning of construction tests be the same as they currently are for wind (e., a physical work of a significant nature test and a 5 percent safe harbor test)?
- Will continuous construction efforts be required under the new regimes?
- What is the consequence of failing to maintain a program of continuous construction?
- Will the project still be eligible for a reduced credit, and how will that credit amount be determined?
- Will there be a placed in service safe harbor?The wind guidance had provided that continuous construction efforts would be considered maintained so long as projects were placed in service prior to a specific date.That date was two years after the end of the year in which the project was required to be placed in service.Most industry participants believe this safe harbor will be extended to apply to wind projects beginning construction through 2016.
- If there is a placed in service "safe harbor," will it apply to all technologies in the same manner?That is, will the safe harbor period be the same for all renewable technologies?
- Will the guidance address and provide examples of "physical work for a significant nature" for solar projects?

- How would the physical work and safe harbor tests apply in the context of residential or commercial and industrial solar projects?
- In the solar context, what will be considered a single “facility” for the purposes of the beginning of construction tests?

A link to the post can be found here <http://www.energybusinesslaw.com/>